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SUBJECT: Thai Customs DG Tells Ambassador Reforms on Track

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Sensitive But Unclassified.

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¶1. (SBU) Summary: The Thai Director General for Customs told the Ambassador that the first two phases of the Customs reform effort mandated by the Abhisit government have been approved by the Cabinet and that the crucial third phase, which will revamp the rewards system, has been drafted and will be presented to the Cabinet in March. The Director General said that his Department is ready to take possession of the Megaports system, as soon as the start date for the five-year U.S. maintenance commitment can be worked out. The Ambassador also raised concerns about major Customs disputes involving U.S. firms, and was assured they would receive fair treatment. End Summary.

¶2. (SBU) Comment: While the Director General's presentation of the progress of the reform program is in line with what he told us in November (see reftel), it nevertheless came as very good news. All three phases of the reform still have to be approved by Parliament, and the Director General could provide no timeline for that. We have heard that the reform of the rewards system, from which Customs officers have benefitted handsomely for years, is being fiercely resisted in the Department. If the Abhisit government can pull off all three phases of this reform program, it will have made a giant leap forward in bringing transparency and good governance to what has historically been one of the Thai government entities least known for such. End Comment.

Customs Reform on Track

¶3. (SBU) During a visit February 24 to Royal Thai Customs, Director General Somchai Sujjapongse told the Ambassador that the first two phases of Thai Customs reform have already been approved by the Cabinet. The first phase, he said, involved an explanation to the Cabinet of Thailand's need to be in compliance with international obligations stemming from the Kyoto Convention and agreements related to the Greater Mekong Sub-region.

¶4. (SBU) The second phase was approved by the cabinet two weeks ago and, according to DG Somchai, included the following:

--an adjustment of the penalty structure giving judges the flexibility to assess penalties from zero to four times the value of the tariffs due. Current law requires an automatic charge of four times the value.

--the establishment of a recognition between "evasion" and "avoidance" in the intentions of a company found to be liable for unpaid tariffs, allowing the judge to recognize that a company may have failed to pay the proper tariff because of simple mis-estimation with no attempt to defraud.

--a change in the charge for late payment "to be more fair than

existing law." Currently, companies can be charged a late fee of 1 percent per month for up to ten years for tariffs judged to be in arrears, which can add up to more than the entire value of the tariffs owed. With this change, late fees will be capped at a value equal to the tariffs owed.

--discretion given to the Director General to waive duty charges of less than 1000 baht (30 dollars) to enable Customs to clear its books of nuisance accounts. The previous limit was 20 baht.

¶5. (SBU) DG Somchai told the Ambassador that when he presented this second phase reform to the cabinet, he received stiff questioning from Prime Minister Abhisit and Justice Minister Pirapan Salirathavibhaga about the status of the initiative to reform the reward scheme. He explained that this third phase reform seeks "to revamp the whole system." This amendment, said DG Somchai while turning to his senior staff also in the meeting, needs to be acceptable to the Royal Customs Department, the private sector, and the whole country.

¶6. (SBU) The Customs Department has been hard at work on this reform. A committee headed by Deputy Director General Wisan, the DG told the Ambassador, has now completed its work and the draft is now in the process of "fine tuning." It will be ready for submission to the Cabinet in March, and will make the Customs Department "transparent."

Megaports

¶7. (SBU) DG Somchai thanked the Ambassador for the U.S. provision of the high-tech equipment involved in the Megaports project at Laem Chabang port. He said that the 2007 Thai Constitution's Section 190, which normally requires Parliamentary approval of any agreement with a foreign country, is "not a problem at all" with regard to Megaports. The only remaining issue is one of timing. The Thai

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side would like the five-year U.S. commitment to fund maintenance on the equipment to begin when the formal turnover is signed (presumably in the next month or two). We noted that the U.S. Department of Energy rep in Thailand believes that five-year period should begin when the equipment first went into full operation last April. The Embassy will work with the U.S. Department of Energy and Thai Customs to resolve this impasse.

U.S. Company Concerns

¶8. (SBU) The Ambassador raised the case of Amway (which was notified last year of an exorbitant penalty charge), noting that this is a respectable U.S. firm and the leading importer of U.S.-manufactured goods into Thailand. DG Somchai promised the Ambassador that Amway would receive "fair treatment" and noted that he was meeting in two days with Thai Trade Representative Kiat to discuss the Amway case. Later, during the tour of Customs' high-tech monitoring center, we raised the FEDEX case, noting that while the company has tentatively agreed to seek a settlement, we hope that Customs will take action against the actual exporter of illegal goods (whose identification FEDEX has made known to Customs) and not just against FEDEX as the exporter of record.

Other Issues

¶9. (SBU) The Ambassador congratulated DG Somchai on Customs' successful interdiction of goods involved in the illegal animal parts trade as part of the ASEAN WEN initiative, which the U.S. supports. DG Somchai appreciated that support.

¶10. (SBU) DG Somchai asked about the USG position on the current law requiring 100 percent scanning of containers entering the U.S. by 2012. We responded that although the Department of Homeland Security has not officially backed away from that date, Secretary Napolitano has said publicly that the Department will seek an extension, thereby pushing it back two years. In previous statements the Secretary had also suggested that implementation may be "tiered" or risk-based, rather than 100 percent from the beginning. We also raised the issue of the return of cash

guarantees to the spirits industry, to which Customs agreed following resolution of a valuation dispute, but has not yet fulfilled.

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